Supreme Court of the United States

October Term, 1969

No. 661

HELLENIC LINES LIMITED and UNIVERSAL CARGO CARRIERS, INC.,

Petitioners,

against

ZACHARIAS RHODITIS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MOTION OF THE ROYAL GREEK GOVERNMENT FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE* AND BRIEF THEREOF

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The Royal Greek Government hereby moves this Court for leave to file a brief *amicus curiae* in this case on petition for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit. The consent of the attorney for the petitioners has been obtained. The consent of the attorneys for the respondent has been requested, but refused.

The Royal Greek Government has an interest in this case in the following respects:

1. As the authority granting Greek registration to m/s Hellenic Hero.

2. As the authority authorizing m/s Hellenic Hero to fly the Greek flag.

3. As the authority granting incorporation under the Greek law to Hellenic Lines Limited as far back as 1934.

4. As the government of the nation of which respondent was both a citizen and a domiciliary.

5. As the government which approved the terms of the Collective Bargaining Agreement between the seaman and the shipowner, which Collective Bargaining Agreement was incorporated by reference in the hiring articles and contract of employment.

6. As the government of the laws referred to by the terms of the hiring articles and the Greek Collective Bargaining Agreement.

The decision of the United States Court of Appeals for the Fifth Circuit undermines the Greek flag and Greek registration of m/s Hellenic Hero and applies the Jones Act (46 U.S. Code § 688) to a personal injury sustained aboard that vessel by a Greek member of the crew, thereby diminishing the authority of the Greek Government over the vessel and her owners and operators.

The Royal Greek Government is concerned because the decision of the Court below varies substantially from the earlier rulings of this Court on the subject of choice of law applicable to a maritime tort as set forth in *J. Lauritzen* v. *Larsen*, 345 U.S. 571 (1953), and *Romero* v. *International Terminal Operating Co. et al.*, 358 U.S. 354 (1959). The decision of the Court below is also in direct contradiction with the decision of the United States Court of Appeals for the Second Circuit based on almost identical facts in *Tsakonites* v. *Transpacific Carriers Corp.*, 368 F.2d 426 (2 C.A. 1967), cert. den. 386 U.S. 1007.

In its brief *amicus curiae* the Royal Greek Government presents the position, not of the Greek respondent who has been held entitled to recover under United States law for his

injury, not of the owners and operators of the Greek vessel who find themselves subject now to a multiplicity of laws, but of the government to which both respondent and the vessel are subject whose authority has been diminished through the application of foreign law to matters relating solely to the internal economy and discipline of the vessel.

The brief of the Royal Greek Government as *amicus curiae* reflects the concern of that Government that its responsibility for the vessels flying its flag and registered under its laws not be diminished, and that its citizens who serve aboard its vessels shall have recourse to the provisions of Greek law covering safety aboard vessels, prompt and adequate medical treatment, and compensation in accordance with the Greek law referred to in the hiring articles irrespective of where the ship might be at the time an injury might occur to a crew member.

The brief *amicus curiae* of the Royal Greek Government reflects as well its concern for the Court below having held that the presence of the Greek flag vessel in a port of the United States at the time of the injury was a factor pointing to application of United States law. The Royal Greek Government sees in that holding a threat to its efforts to achieve uniformity of application of law irrespective of the national or international waters on which its vessels may be sailing.

Respectfully submitted,

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BRIEF OF THE ROYAL GREEK GOVERNMENT AS *AMICUS CURIAE*

The interest of the Royal Greek Government in this petition for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit would seem to be self-evident. M/s Hellenic Hero was a vessel flying the Greek flag, registered in Greece in accordance with Greek law, and operated by Hellenic Lines Ltd., the petitioner, a Greek corporation, all of whose officers and directors are Greek citizens. The injured seaman respondent was both a citizen of Greece and a resident of Greece. In addition, the respondent signed his articles and contract of employment in Greece, which contract called for application of the Greek Collective Bargaining Agreement and Greek law.

The particular concern of the Royal Greek Government arises from the decision of the United States Court of

Appeals for the Fifth Circuit stating that "the Hero's flag is more symbolic than real" and "that the Hero's flag is merely one of convenience."

These findings, which led to the overall conclusion that the Jones Act (46 U.S. Code § 688 *et seq.*) and the general maritime law of the United States should be applied, are in direct contradiction with the decision of the United States Court of Appeals for the Second Circuit in a virtually identical case—*Tsakonites* v. *Transpacific Carriers Corp.*, 368 F.2d 426 (2 C.A. 1967), cert. den. 386 U.S. 1007.

Additionally, the decision below would seem to be in direct conflict with *J. Lauritzen* v. *Larsen*, 345 U.S. 571 (1953), where at page 584 it was stated:

> "Each state under international law may determine for itself the conditions on which it will grant its nationality to a merchant ship, thereby accepting responsibility for it and acquiring authority over it. Nationality is evidenced to the world by the ship's papers and its flag. The United States has firmly and successfully maintained that the regularity and validity of a registration can be questioned only by the registering state."

ARGUMENT

Guidelines for determining the weight to be ascribed to what Circuit Judge Goldberg below termed the "seven immortal pillars" are amply set forth in *J. Lauritzen* v. *Larsen*, 345 U.S. 571 (1953). The decision of the United States Court of Appeals for the Fifth Circuit has not followed these guidelines in arriving at its conclusion that the Jones Act should be applied.

The decision of the United States Court of Appeals for the Fifth Circuit ascribes undue weight to the injury having occurred aboard the vessel while she was in a United States port. Circuit Judge Goldberg states that

"The American character of this tort is further emphasized" by that fact. He states that this "weakens our bondage to the flag", and that "when combined with the totality of American contacts, the fact that the accident occurred in our territorial waters points to Jones Act applicability".

Yet, *J. Lauritzen* v. *Larsen, supra,* substantially eliminated the particular location of the vessel as having any influence on the choice of applicable law. At 345 U.S. 583 it was stated:

> "The test of location of the wrongful act or omission, however sufficient for torts ashore, is of limited application to shipboard torts, because of the varieties of legal authority over waters she may navigate."

Later, at page 584 of 345 U.S., this Court added:

> "But the territorial standard is so unfitted to an enterprise conducted under many territorial rules and under none that it usually is modified by the more constant law of the flag."

Further comments upon the weight to be ascribed to this factor are found in *Romero* v. *International Terminal Operating Co., et al,* 358 U.S. 354 (1959). In the *Romero* case the injury had occurred aboard the vessel while she was in the Port of New York. The *Larsen* injury had occurred in the Port of Havana. Mr. Justice Frankfurter commented upon the weight to be ascribed to the situs of the tort at 358 U.S. 384:

> "To impose on ships the duty of shifting from one standard of compensation to another as the vessel passes the boundaries of territorial waters would be not only an onerous but also an unduly speculative burden, disruptive of international commerce and without basis in the expressed policies of this country."

The clear holdings of the *Larsen* and *Romero* cases are that the law of the place where the vessel happens to be at the time of the shipboard injury should not be given weight. But the decision of the United States Court of Appeals for the Fifth Circuit as to which petitioner seeks a review has ascribed weight to this factor. A reading of the opinion indicates that the decision might have gone the other way had not the injury occurred while the vessel was in the Port of New Orleans. The inequity of such an approach to the conflicts of law question should be patent. Is the choice of law to be applied to a shipboard injury to a crew member going to be influenced by the location of the vessel? The decisions of this Court tell us that it should not.

We respectfully submit that the Fifth Circuit has erred in eliminating the significance of Mr. Justice Jackson's third factor—Allegiance or Domicile of the Injured, by stating that: "We find the domicile of the injured seaman to be unimportant." In fact, the Greek citizenship and domicile of Zacharias Rhoditis, who signed the hiring agreement calling for application of Greek law and employment subject to the Greek Collective Bargaining Agreement in Heraclion, Greece, to serve aboard the Greek flag vessel, registered in Greece, indicates that the seaman respondent was no stranger to the service for which he was engaged, and there is a strong presumption that he entered upon his employment without illusions. The same might not be said had the seaman by reasons of his citizenship and domicile been a complete stranger to the flag, to the port of registration, to the place of sign-on, and to the law referred to in the hiring articles.

The consideration given by the United States Court of Appeals for the Second Circuit to the injured seamen's citizenship and domicile in *Tsakonites* v. *Transpacific Carriers Corp.*, 368 F.2d 426 (2 C.A. 1967), cert. den. 386 U.S. 1007, is noteworthy. This was the case, of course, where the United States Court of Appeals for the Second Circuit

reached a diametrically opposite conclusion from that reached by the Court below in this *Rhoditis* case. Circuit Judge Moore, writing for the majority, stated:

> "Plaintiff is an alien, who is not even an American resident. His employment contract by its terms limits his rights to those arising under Greek law—a factor to which weight must be given because it represents plaintiff's jurisdictional choice. Nor can, in this case, the Greek flag of the *Hellenic Spirit* be said to be a 'flag of convenience,' within the meaning of cases like *Bartholomew* v. *Universe Tankships Inc.*, 263 F.2d 437, 440 (2d Cir.), cert. denied, 359 U.S. 1000 (1959), and *Southern Cross SS Co.* v. *Firipis*, 285 F.2d 651 (4th Cir. 1960), *cert. denied*, 365 U.S. 869 (1961)."

Should not the Greek citizenship and domicile of Rhoditis be at the very least an indicator further emphasizing the non-American character of the tort, which when combined with the other non-American contacts would point to the *in*applicability of the Jones Act? *J. Lauritzen* v. *Larsen, supra,* does not hold that the nationality and domicile of the injured man are of no significance, for at 345 U.S. 587, it was stated:

> "His [the Danish seaman] presence in New York was transitory and created no such national interest in, or duty toward, him as to justify intervention of the law of one state on the shipboard of another."

The holding of the Fifth Circuit also flies in the face of the following comments by Mr. Justice Jackson bearing on the nationality of the plaintiff and the form of articles signed (345 U.S. 588-9):

> "Except as forbidden by some public policy, the tendency of the law is to apply in contract matters the law which the parties intended to apply. We are aware of no public policy that would prevent the parties to this contract, which contemplates performance in a multitude of territorial jurisdictions and on the high seas, from so settling upon the law of

> the flag-state as their governing code. This arrangement is so natural and compatible with the policy of the law that even in the absence of an express provision it would probably have been implied."

Finally, the holding below would seem to be in conflict with *J. Lauritzen* v. *Larsen, supra,* in that the Court had failed to ascribe to the flag of the vessel the weight it was properly due. Sixteen years after *J. Lauritzen* v. *Larsen, supra,* it would hardly seem necessary to state that the law of the flag is *the* factor. Mr. Justice Jackson stated that "cardinal importance" was to be given to the law of the flag (345 U.S. 584), that "the weight given to the ensign overbears most other connecting events in determining applicable law (345 U.S. 585), and that the law of the flag should be applied "unless some heavy counterweight appears" (345 U.S. 586).

It should not be assumed that the Greek flag and the Greek registration of Hellenic Hero were lightly given. Hellenic Lines Ltd. was organized as a Greek corporation in 1934. All of its stockholders and directors and officers are citizens of Greece. The vessels call regularly at Greek ports. Only Greek seamen are employed on the various vessels including Hellenic Hero.

The Court below negates the weight and cardinal importance to be given to the flag by pointing to the domicile of the majority stockholder who, though concededly a Greek citizen, is a domiciliary of the United States. This fact prompts the Court below to hold that the Greek flag was "more symbolic than real" and "merely one of convenience". We submit that in looking at the overall operation any flag *other* than the Greek flag would be one of convenience and mere symbolism.

Furthermore, the Court below has ascribed undue weight to the more or less frequent calls of the various vessels in

one of the Hellenic Line services at ports of the United States.

It has never been held by this Court that the validity of the flag or registration of the vessel should be vitiated through engagement in foreign and international commerce with regular calls at United States ports. The consequence of such calls was discussed in *J. Lauritzen* v. *Larsen* at 345 U.S. 581:

> "Respondent places great stress upon the assertion that petitioner's commerce and contacts with the ports of the United States are frequent and regular, as the basis for applying our statutes to incidents aboard his ships. But the virtue and utility of seaborne commerce lies in its frequent and important contacts with more than one country. If, to serve some immediate interest, the courts of each were to exploit every such contact to the limit of its power, it is not difficult to see that a multiplicity of conflicting and overlapping burdens would blight international carriage by sea. Hence, courts of this and other commercial nations have generally deferred to a non-national or international maritime law of impressive maturity and universality. It has the force of law, not from extraterritorial reach of national laws, nor from abdication of its sovereign powers by any nation, but from acceptance by common consent of civilized communities of rules designed to foster amicable and workable commercial relations."

To hold otherwise would be to jeopardize the flags of vessels engaged in regular foreign commerce. For example, are we to question the validity of the flag of a United States vessel which calls as often at Southampton, England, as it does at New York? Conversely, must we question the flag of a foreign vessel which calls as often at the Port of New York as it does at its home port of Southampton?

In holding that the Jones Act and the General Maritime Law of the United States apply to an injury sustained

aboard the Greek flag vessel the Court of Appeals has failed to follow the directives of this Court as set forth in *J. Lauritzen* v. *Larsen, supra,* and *Romero* v. *International Terminal Operating Co., et al., supra.*

CONCLUSION

The petition for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit should be granted.

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